

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:08CR409
)
v.)
)
OLGA ECHERIVEL,) MEMORANDUM OPINION
)
Defendant.)
)

This matter is before the Court on the motion of defendant Olga Echerivel ("Echerivel" or "defendant") under 28 U.S.C. § 2255 to correct/modify sentence pursuant to U.S.S.G. App. C. Amend 794 (Filing No. [172](#)). After review of the motion and the applicable law, the Court will deny the motion.

DISCUSSION

This is the fourth motion defendant has filed pursuant to 28 U.S.C. § 2255. Her first § 2255 motion, filed on July 11, 2011 (Filing No. [124](#)), was denied by this Court on August 29, 2011 (see Filing Nos. 127 and 128). The Court denied Echerivel's second § 2255 motion (Filing No. [131](#)) on largely the same grounds. See *United States v. Echerivel*, 8:08CR409, 2012 WL 3025115 (D. Neb. July 24, 2012) *reconsideration denied*, 8:08CR409, 2012 WL 3202534 (D. Neb. Aug. 6, 2012) *aff'd*, 500 F. App'x 568 (8th Cir. 2013).

On October 8, 2013, the Court denied defendant's third petition for lack of jurisdiction (Filing Nos. 150, and 151). Defendant appealed to the United States Court of Appeals for the Eighth Circuit without being granted leave to file in forma pauperis. See Filing Nos. 152-156. The Eighth Circuit denied defendant's application for a certificate of appealability and dismissed the appeal (Filing No. [161](#)). On September 22, 2014, defendant filed a motion to reduce her sentence (Filing No. [163](#)). On February 24, 2015, the Court reduced defendant's sentence from 130 months to 120 months pursuant to the retroactive amendment to the drug quantity table charges under the United States Sentencing Guidelines (Filing Nos. 170 and 171).

On October 17, 2016, defendant filed her present § 2255 motion (Filing No. [172](#)). This habeas petition, like defendant's previous petition (Filing No. [149](#)), constitutes another "second or successive motion" within the meaning of 28 U.S.C. § 2255. 28 U.S.C. § 2255(h); see also *Vancleave v. Norris*, 150 F.3d 926, 927-29 (8th Cir. 1998); *United States v. Allen*, 157 F.3d 661, 664 (9th Cir. 1998). A petitioner seeking to file a second or successive § 2255 motion challenging their conviction or sentence must first obtain circuit court certification. 28 U.S.C. § 2255(h); *Allen*, 157 F.3d at 664; *United States v. Arnold*, No. CRIM. 4-91-72(2) (PAM), 2001 WL 435648, at *1 (D. Minn. April 24,

2001). Because the defendant has not received approval from the Eighth Circuit to file a second or successive § 2255 motion, the Court lacks jurisdiction over her claims. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000); *Allen*, 157 F.3d at 664; *United States v. Alvarez-Ramirez*, 128 F. Supp. 2d 1265, 1267 (C.D. Cal. 2001). Accordingly, because the Court lacks jurisdiction, the petition will be denied without prejudice. A separate order will be entered in accordance with this memorandum opinion.

DATED this 3rd day of November, 2016.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court